IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2185 OF 2006

Electro Pneumatic & Hydraulics (I) Ltd. ..Petitioner.
Vs.
Harinder S. Singh ..Respondent.

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Mr. C.U. Singh, Senior Advocate i/b M/s. Sanjay Udeshi & Co. for the Petitioner.
Mr. Shailesh Pathak with Mr. T.R. Yadav for the Respondent.

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CORAM: DR. D.Y. CHANDRACHUD, J.

30th August, 2006.

P.C. :

1. The Respondent was employed as a fitter, driller, shaper and hack-saw operator by the Petitioner since 17th November, 1989. The management introduced a policy since 1992-93 to provide for reimbursement of educational expenses incurred by the employees for their children. One of the conditions of reimbursement was that the child should pass the standard in which he or she was studying and that the child ought to have been promoted to the next class to which the facility of reimbursement was extended. During the academic year 1996-97 the Respondent claimed reimbursement for the educational expenses of his three

children who were studying in Parvati Vidya Mandir School. The report card for one of the three children, Master Benoy Singh, that was submitted by the Respondent was not signed by the Head Master. The Petitioner enquired with the Head Master on 13th June, 1997 in regard to the authenticity of the report card submitted by the Respondent as well as with regard to the fee structure for the academic year 1996-97. The Head Master is stated to have replied by a letter dated 4th July, 1997 that the report card submitted by the Respondent in regard to his son Master Benoy Singh was not genuine and that the marks which were reflected therein were not the correct marks that were obtained by the student during the course of the academic year. The Head Master of the school is also stated to have made a reference to the correct fees which had been charged by the school during the academic year. The fees were lower than the claim for reimbursement made by the Respondent. A charge sheet was issued to the Respondent by the management on the basis of the Head Master's letter dated 4th July, 1997 alleging that the marks that had been obtained by the Respondent's son had been manipulated by the Respondent and that the claim that was lodged by the Respondent in respect of the fees that were paid in respect

of all the three children was inflated. The enquiry was conducted over several sessions. The Respondent did not file a reply to the charge sheet.

2. The enquiry was initially convened on 11th August, 1998 when the defence representative Mr. R.L. Singh was present. The defence representative was a union representative of the choice of the Respondent. The proceedings were adjourned to 2nd September, 1998. On 2nd September, 1998 the proceedings were adjourned to 17th September, 1998. On 17th September, 1998 the Respondent as well as his representative were absent but, in the interest of fairness the enquiry was adjourned to 24th September, 1998. A medical certificate had been submitted by the Respondent. On 24th September, 1998 the Respondent as well as his representative were again absent but, the Respondent had sent a medical certificate as on the previous occasion stating that he had been advised further bed rest for a period of seven days. The enquiry was once again adjourned to 6th October, 1998. On 6th October, 1998 the Respondent and his representative were absent. The Enquiry Officer declined to adjourn the enquiry any further and the examination-in-chief of the first witness for the management

was recorded. The enquiry was thereafter posted to 13th October, 1998. On 13th October, 1998 the Respondent was present and he once again sought an adjournment on the basis of a medical certificate produced on behalf of his defence representative. The Enquiry Officer held that though there was substance in the objections raised by the management that the enquiry was being unduly delayed on account of the failure of the Respondent to bring his representative, the enquiry was adjourned to 19th October, 1998. Once again on 19th October, 1998 the Respondent applied for an adjournment since his representative was absent. The Enquiry Officer declined to adjourn the enquiry any further and concluded the hearing.

3. In the report of the Enquiry Officer the Respondent was found to be guilty of misconduct both on the ground that he had manipulated the report card and inflated the fees in the claim form submitted to the management. A notice to show cause was addressed to the Respondent on 23rd October, 1998. The Respondent did not submit a reply thereto. By a letter dated 26th November, 1997 the services of the Respondent were terminated.

4. The Respondent then moved a complaint of unfair labour practices before the Labour Court. The Labour Court by its order dated 17th April, 2003 came to the conclusion that the enquiry was not fair and proper and that the findings of the Enquiry Officer were perverse. The management carried the matter in revision. The revision application was dismissed on 28th February, 2006. On behalf of the Petitioner, the correctness of the findings of the Labour Court as affirmed in revision has been challenged.

5. Principally, the Labour Court was of the view that the enquiry was conducted in haste and that a sufficient opportunity was not granted to the workman to adduce evidence. There is merit in the submission which has been urged on behalf of the Petitioner that the the record of the enquiry would ex facie show that sufficient opportunity was granted to the Respondent. The narration of facts shows that the enquiry was adjourned from time to time. Sufficient opportunity was granted to the Respondent to bring his defence representative and when a medical certificate was produced the enquiry was duly adjourned. The defence representative having consistently remained absent, it cannot now be contended that the Enquiry Officer was in error in not allowing

the request of the Respondent for further postponement. A disciplinary enquiry should not be indefinitely or unduly postponed and the record of the present case does demonstrate that sufficient opportunities were granted to the Respondent. A chargesheeted workman has no vested interest in delay. The even course of flow of a disciplinary enquiry cannot be allowed to be obstructed by the employee, whose conduct is being enquired into, adopting delaying tactics. Adjournments cannot be claimed as a matter of right. In this case, adjournments were granted from time to time. Despite this, if the representative of the Respondent remained absent, that was a circumstance which cannot be held against the Enquiry Officer. The second point which weighed with the Labour Court was that the letter of the Head Master dated 4th July, 1997 was not duly proved in the evidence since the Head Master himself was not brought in as a witness. In so far as this aspect is concerned, there is merit in the submission of the Petitioner before the Court that it is a settled principle of law that disciplinary enquiries are not governed by the strict rules of evidence that govern a criminal trial. The management had received a letter from the Head Master upon which the charge sheet was founded and the receipt of the letter was sought to be established by the evidence of the management's

witness. During the course of these proceedings, an effort was made by this Court to seek production of the record from the concerned school and an interim direction was issued on 23rd August, 2006. In response thereto a letter dated 29th August, 2006 received by the Petitioner's advocate has been placed on the record. The said letter of the Head Mistress records that Parvati Vidya Mandir was sold by the then owner Mr. Amar Singh Thakur to one Mr. Shyam K. Sharan and was immediately closed down by the then owner. Mr. Shyam Sharan is stated to have commenced a school under the name and style of Bombay Public Primary School which was functioning until May 2006. Thereafter the school was purchased by the present management from the erstwhile owner in June 2006 and a new school in the name of Cambridge High School was commenced in June 2006. The Head Mistress has stated that she has not received any documents pertaining to the erstwhile Parvati Vidya Mandir which had already been closed down. In this state of the matter, there is merit in the contention of the management that placing an insuperable burden upon the management to establish the misconduct again before the Labour Court would frustrate the object of the disciplinary enquiry. It is not the contention of the Respondent that the letter

produced by the management is not genuine or that there are any malafides on the part of the management. In these circumstances, the Labour Court was entirely in error in holding that there was no legal evidence or that the letter was not proved.

At the hearing of this Petition counsel appearing for the Respondent, however, has sought to urge various other submissions. These submissions are (i) the charge sheet that was issued to the Respondent was vague; (ii) the enquiry was conducted in English, a language which was not known to the Respondent; (iii) on 13th October, 1998 the management's witness was not called for cross examination by the Enquiry Officer. Of the aforesaid submissions, it would appear that the issue relating to the language in which the enquiry was conducted was not raised before the Labour Court at all. It would appear that when the management carried the matter in revision to the Industrial Court, a passing observation was made in the concluding part of the judgment of the Industrial Court that the enquiry was conducted in a language not known to the workman.

The Enquiry Officer had during the course of the enquiry

passed an order to the effect that as desired by the defence representative the enquiry would be held in Hindi but, for the sake of convenience the proceedings will be recorded in English. Reliance has been placed by counsel appearing for the management to the record of the Enquiry Officer dated 2nd September, 1998 in which the workman had stated that the entire proceedings had been recorded in Hindi and had been duly explained to him. There is merit in the submission which has been urged on behalf of the management that the challenge that the enquiry had been conducted in English was not raised at all before the Labour Court. Both the learned counsel have fairly accepted the position that the submissions (namely those summarised as i, ii and iii above) which have been urged before the Court today on behalf of the Respondent have not been urged before the Labour Court in the first instance at all.

In these circumstances, I am of the view that the grounds which weighed with the Labour Court are totally unfounded and lacking in merit. Ordinarily, the order of the labour Court would have to be set aside with a remand for the purpose of determining the remaining questions. However, I am of the view

that the interests of fairness do require that the Respondent may be given an opportunity of urging the additional submissions made before this Court in the proceedings of the first instance before the Labour Court. Learned Senior Counsel for the management has fairly not opposed the order of remand. In this situation, both the learned counsel have fairly stated before the Court that it would be in the interests of justice if the orders passed by the Labour Court and by the Industrial Court in these proceedings are quashed and set aside and the matter is remitted back to the Labour Court for reconsideration of the question as regards the fairness of the enquiry and the question as to whether the findings of the Enquiry Officer suffer from any perversity in the light of the observations made hereinabove. It is, however, clarified that it will be open to the Respondent to urge any additional points that he seeks to urge in regard to the fairness of the enquiry and the perversity of the findings, save and except for those in respect of which a finding has been arrived at in the course of this judgment as aforesaid. The Labour Court shall decide the matter afresh on the basis of the existing material. In these circumstances, by consent, the impugned orders dated 17th April, 2003 of the Labour Court and dated 28th February, 2006 of

the Industrial Court are quashed and set aside. The parties shall appear before the Labour Court for receiving directions on 18th September, 2006. The Labour Court shall endeavour an expeditious disposal preferably within a period of six months from the date on which parties are directed to appear. The Petition is allowed in these terms. There shall be no order as to costs.